

June 30, 2021

Via FOIAonline

National FOIA Office
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW (2310A)
Washington, DC 20460

To the FOIA Officer:

This is a request under the Freedom of Information Act (FOIA), 5 U.S.C. 552. I request a copy of all documents discussing, providing guidance on, and implementing EPA's "Capstone" email policy or policies. This request includes the following categories of documents:

- 1). Guidance to staff on the Capstone email policy as issued by leadership officials, records management officials, the Office of the Chief Information Officer (CIO), the General Counsel's office, FOIA staff, or any other office responsible for the management of email records. This request includes any guidance issued as early as 2015 as well as any subsequent updates or revisions to the guidance
- 2). Any documents discussing implementation of General Records Schedule 6.1, including but not limited to the listing or designation of EPA agency officials on NARA Form NA-1005, GRS 6.1-0412-2017-0001.¹
- 3). Documentation describing the proprietary software used in implementing EPA's Capstone email policy, including what software or platform is used to store Capstone emails in one or more electronic repositories.
- 4). Emails between or among staff concerning EPA's Capstone email policy or program, including discussions concerning the initiation of the policy, implementation and management of email under the policy, and/or changes made to any element of the Capstone policy based on public comments or otherwise.
- 5). Any agency letters, reports, e-mails, or other documents discussing or containing information about the agency's Capstone email policy sent to or in response from external sources, including either to or from Congress, NARA, DOJ, another Executive branch agency,

¹ See <https://www.archives.gov/files/records-mgmt/rcs/schedules/independent-agencies/rg-0412/grs-6-1-0412-2017-0001-c.pdf>

the Government Accountability Office, or in connection with an audit or investigation by the agency's Inspector General of the agency's recordkeeping programs or other matters.

Please provide all responsive records from January 1, 2015 through the present.

Adequacy of Search. With respect to categories (1) through (5), I request that the agency request all custodians of documents who might be expected to possess responsive records to search their own network and local drives, as well as any hard-copy records in their possession. Potential custodians include listed Capstone account holders listed on EPA's NARA Form NA-1005, as well as other leadership officials, records management staff, CIO staff, general counsel staff, and FOIA staff.

Additionally, I request that you also direct a search be made of the agency's Capstone email repository or repositories for responsive records. I suggest that your search terms include, but not be limited to, "Capstone," "General Records Schedule 6.1," "GRS 6.1," and "NA-1005." If the term "Capstone" produces too many hits on non-responsive records (either because the agency has some other policy or program using "capstone" in its title, or otherwise), I would be happy to work with agency staff to narrow the search using Boolean terms. Please let me know if I can be of further assistance in general on conducting searches, so as both to reduce any burden imposed on staff and to expedite this request.

Segregability & Foreseeable Harm. The FOIA directs the agency to make reasonable efforts to segregate any withholdable material from otherwise non-exempt material in each document. In doing your review for segregability and for withholding generally, the agency should apply the "foreseeable harm" standard in the FOIA as set out in 5 U.S.C. 552(a)(8)(A)(i)(I). This is especially the case with respect to any possible withholdings under Exemption 5's deliberative process privilege.

Interim Releases. I would be happy to receive documents on a staggered or interim basis. Please consider providing me first with guidance documents in category (1). Responsive documents in the remaining categories would be provided subsequently, as expeditiously as possible.

Request for Electronic Format. I ask that any responsive documents to this request be provided to me in an electronic format capable of being searched (e.g., native email formats, Word documents, and PDF documents that have been subject to OCR (optical character recognition)).

Fee Waiver. I request that fees be waived for this request under 5 U.S.C. 552(a)(4)(A)(iii), and the Uniform Freedom of Information Act Fee Schedule and Guidelines, 52 FR 10012 (March 27, 1987), as amended, 85 FR 81957 (Dec. 17, 2020) (revising language of section 8b).²

² Section 8(b) states in relevant part:

Educational and Non-commercial Scientific Institution Requesters—* * * To be eligible for inclusion in this category, requesters—whether faculty, staff, or students—must show that the request is being made in

I hold a full-time faculty position at the University of Maryland's College of Information Studies, one of the leading information science graduate schools in the U.S. and the world.³ The College expects faculty members to engage in high-quality research as part of their overall job duties, and this request is in furtherance of ongoing research supported by the College.⁴ There is no commercial purpose to this request.

Moreover, this request is in the public interest. The request aims to foster a significantly better public understanding of the government's operations and activities in the area of electronic recordkeeping. Capstone email policies are relatively recent, having been adopted to meet a deadline of December 31, 2016 for agencies managing email in electronic form. See Goal 1.2 in former OMB M-12-18 ("Managing Government Records Directive," setting December 31, 2016 as a deadline for agencies to manage email electronically).⁵ This requirement continues in place pursuant to Section 1.1 of OMB M-19-21 ("Transition to Electronic Records").⁶

The current request will likely contribute to public understanding by providing knowledge of how officials at this agency considered and first implemented the Capstone e-mail policy in place, how recordkeeping guidance regarding Capstone has been communicated to agency employees, and what issues may have arisen in continuing the management of email records under the policy. Given that Capstone repositories at this agency and others may soon contain a large number of electronic records (ranging from the hundreds of thousands to tens of millions of emails and attachments), the records sought by the present request will meaningfully inform the public at large as to how your agency is capturing and providing access to these records. As the 2018-2020 FOIA Advisory Committee Report to the Archivist noted, agencies "have not generally informed FOIA requestors about agency adoption of a "Capstone email policy."⁷

I have subject matter expertise in the area of government recordkeeping policies, having been Director of Litigation at the National Archives and Records Administration (NARA) between 2000 and 2013, and prior to that a trial lawyer at the Department of Justice where I served as lead lawyer on the White House email lawsuit, *Armstrong v. Executive Office of the President*.⁸ I helped craft the original NARA email regulations promulgated in 1995, as well as the Capstone policy as originally developed prior to issuance of M-12-18. I have

connection with their role at the institution, and that the records are not sought for a commercial use, but are sought in furtherance of scholarly (if the request is from an educational institution) or scientific (if the request is from a non-commercial scientific institution) research. * * *

³ See *U.S. News & World Report* (2021), <https://www.usnews.com/best-graduate-schools/top-library-information-science-programs/library-information-science-rankings> (ranking U. Maryland's program as #4).

⁴ See, e.g., J.R. Baron, M.F. Sayed & D.W. Oard, "Providing More Efficient Access to Government Records: A Use Case Involving Application of Machine Learning to Improve FOIA Review for the Deliberative Process Privilege," <https://arxiv.org/abs/2011.07203>.

⁵ <https://www.archives.gov/files/records-mgmt/m-12-18.pdf>

⁶ <https://www.archives.gov/files/records-mgmt/policy/m-19-21-transition-to-federal-records.pdf>

⁷ <https://www.archives.gov/files/ogis/assets/foiaac-final-report-and-recs-2020-07-09.pdf> (page 11, Recommendation # 2).

⁸ 1 F.3d 1274 (D.C. Cir. 1993).

written a number of published articles discussing M-12-18 and the Capstone policy.⁹ Over the past 25 years, I have given over 600 presentations worldwide on preservation and access to electronic records. In 2013, I was awarded the Justice Tom C. Clark Outstanding Government Lawyer Award by the Federal Bar Association. In 2011, I received the international Emmett Leahy Award for my career achievements in records and information management. I intend to continue publishing scholarly research on the subject of the government's electronic recordkeeping policies and practices as well as giving invited talks to public audiences on related topics.¹⁰

Assuming a fee waiver is granted, I wish to reserve for further discussion the amount I am willing to pay for any anticipated copying fees. As I am requesting records to be sent to me in an electronic form, I do not expect there to be any copying fees associated with this request. Please contact me if this turns out not to be the case, so that a cap can be set on any such fees.

Further Dialogue To Narrow Request. I would be happy to speak to anyone in the FOIA Office about the scope of this request, in an effort to clarify or narrow the request.

I will expect to hear back from your office within 20 days, pursuant to 5 U.S.C. 552(a)(6)(A). Please direct all replies to my email address at jrbaron@umd.edu. For any correspondence requiring the use of the US Mail, please see my mailing address below (home address due to continuing COVID-related closures).

Thank you for your facilitation of this request. I look forward to hearing from you.

Sincerely,

Jason R. Baron

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⁹ See, e.g., "What Lessons Can Be Learned From the US Archivist's Digital Mandate For 2019 And Is There Potential For Applying Them in Lower Resource Countries," 26 RECORDS MANAGEMENT JOURNAL, NO. 2 (2016).

¹⁰ For a copy of my CV, see the link at <https://ischool.umd.edu/about/directory/jason-r-baron>.